

B1
Contd

calcium-free membrane material, selected from the group consisting of a fat, a soap, a stearate, a protein, a polysaccharide, a cellulose, a gum, a glycol, and gelatine.

BA
See E1

Please add the following new claim:

35 (new). The composition of claim 14 where said membrane material, at the body temperature of the lactating animal, is solid at a pH value above 4.0, and dissolves at pH below 4.0.

REMARKS

1. In response to a restriction, Applicants elected group II and species (A), with traverse. The Examiner says that claims 1-13, 20, 21, 26, 27 and 30 stand withdrawn from further consideration as being directed to a nonelected invention and species, adding "Election was made **without** traverse in Paper No. 11".

The Examiner is mistaken. Paper NO. 11, filed May 31, 2001, was titled "ELECTION WITH TRAVERSE" (emphasis added). The group-level restriction was traversed on the ground that "one or more of the composition claims of group II are allowable, and hence the method claims of group I are rejoinable if made dependent on the allowable composition claims". This is a proper basis for traversal under MPEP §821.04.

The species restriction was likewise traversed on the ground that generic claims are allowable. See MPEP §809.02. Applicants were required to elect (A) a calcium-binding compound or (B) a zinc compound. In response, they elected (A), with traverse. The Examiner indicated that (A) corresponded to claims 3-6 and 16-19; applicants argued that at least group II claims 14, 27, 28 and 29 were also generic.

We were further required to elect a single calcium-binding compound as a subspecies. Applicants elected the zeolites of claim 5 and, if need be, the sodium aluminosilicate zeolite A of

claim 6. This election was plainly with traverse as, on page 1, the species restriction was traversed.

By the present amendment, the limitations of claims 17 and 23 have been added to 14, and coverage of "derivatives" removed. At page 3, lines 6-7, the Examiner concedes that such combination is "unanticipated and nonobvious".

Amended claim 14 differs from this combination only in that the "pH4" limitation has been excised. This limitation was not originally a part of claim 14; it was extracted from claim 24 (now cancelled) in an effort to reach agreement with the Examiner as to patentable subject matter. Since this amendment was not successful in overcoming the prior art rejection, we decided to reverse it.

Nonetheless, we believe that amended claim 14 distinguishes the art. Hence, the claims of group I (1-13), which are directly or indirectly dependent on 14 by virtue of the preliminary amendment of May 3, 2001, are properly rejoined pursuant to MPEP §821.04.

By introducing into 14 the limitations of claim 17, claim 14 effectively requires the use of a calcium-binding compound (17 is dependent on 16). Thus amended, claim 14 is limited to species (A). The claims specific to species (B) (zinc compounds) are claims 8, 21 and 22, and these have been cancelled.

Claims 20 and 26, which were deemed withdrawn, are within group (II), and we do not see how they are affected by the limitation to species (A).

Claim 30 is dependent on claim 1 (group I), but we have already explained why the claims of group I should be rejoined, and it should not be affected by the species restriction. Hence, it appears that claims 1, 2, 5-7, 10-13, 20, 26, 27 and 30 should be rejoined.

2. The Examiner's rejection of claims 23, 33 and 34 for indefiniteness by virtue of "derivatives" is moot as these claims

have been cancelled and claim 14, as amended, omits the "derivative" language.

We appreciate that, after rejoinder, claims 5 and 6 require excission of derivatives to be allowable, and we would authorize an Examiner's amendment to that effect. We were unsure whether, after final, we could make such amendment prior to their official rejoinder.

3. The rejection of claims 14, 16-19, 23-25, 28, 29, 31-34 as obvious has been maintained. At page 3, lines 6-7 the Examiner states, "the combination of claims 14, 17 and 23 with derivatives removed is seen as unanticipated and unobvious". Claim 14 has been amended to incorporate the limitations of claims 17 and 23, and claims 3, 4, 9, 16, 17, 23, 33 and 34 cancelled as obsolete.

The examiner has taken the position that claim 14 as presented is obvious and that claim 14, if amended to include the limitations of 17 and 23, would not be obvious. Without prejudice or disclaimer, we have amended 14 to include the latter limitations, but have also excised the "pH 4" limitation, which was not originally included in claim 14 but rather was introduced from claim 24 in a prior attempt to reach agreement with the Examiner as to where the patentable subject matter lies. Reading the Examiner's analysis of the art, we did not receive the impression that he was relying on the "pH 4" limitation as a distinction. Hence, we removed this limitation as one superseded by the limitations of claims 17 and 23. Out of caution, we have transferred it to new claim 35.

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Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "Version with markings to show changes made".

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the claims:

Claim 14 has been amended as follows:

14 (thrice amended). A composition for preventing parturient hypocalcemia in an animal, comprising, in a suitable form for peroral administration, at least one calcium-binding compound which reduces the absorption of calcium from the drinking water and/or from the ration of said animal, said compound being selected from the group consisting of oxalic acid, sodium oxalate, phytic acid, a phytate, a clay mineral, ethylenediaminetetraacetic acid (EDTA) and its sodium salts Na₂EDTA and Na₄EDTA, trisodium nitrilotriacetate monohydrate, trisodium nitriloacetate, pentasodium diethylenetriaminepentaacetate, trisodium N-hydroxyethyl-ethylenediaminetriacetate, citric acid, a citrate, a polyphosphate, a tripolyphosphate, an orthophosphate and a cellulose phosphate, wherein the compound is encapsulated by a calcium-free membrane material, selected from the group consisting of a fat, a soap, a stearate, a protein, a polysaccharide, a cellulose, a gum, a glycol, and gelatine [which at the body temperature of the lactating animal is solid at a pH value above 4.0 but which dissolves at pH below 4.0].

Claims 3, 4, 8, 9, 16, 17, 21, 23, 33 and 34 have been cancelled.

Claim 35 has been added.